

**IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE**

STATE OF TENNESSEE,)
***ex rel.* ROBERT E. COOPER, JR.,**)
ATTORNEY GENERAL & REPORTER,)

Plaintiff,)

v.)

OLUDARE SAMUEL OLOMOSHUA, a.k.a)
DR. OLUDARE SAMUEL OLOMOSHUA,)
a.k.a. *SAM ADU, a.k.a. S. O. B. ADU,*)
individually and collectively doing business as)
WISDOMITE SPIRIPATHOLOGY)
HEALING MISSION AND MUSIC)
MINISTRY, INC., SPIRIPATHOLOGY)
SCHOOL OF MEDICINE, WISDOMITE)
HEALING MISSION and)
www.spiripathologyhealing.com, and)
WISDOMITE SPIRIPATHOLOGY)
HEALING MISSION AND MUSIC)
MINISTRY, INC., a domestic non-profit)
corporation doing business as WISDOMITE)
HEALING MISSION, SPIRIPATHOLOGY)
SCHOOL OF MEDICINE, and)
spiripathologyhealing.com,)

Defendants.)

No. _____

**MEMORANDUM OF LAW IN SUPPORT OF STATE’S MOTION FOR
TEMPORARY INJUNCTIVE RELIEF AND OTHER EQUITABLE RELIEF**

The State has initiated a civil law enforcement proceeding brought by the Attorney General & Reporter of the State of Tennessee, Robert E. Cooper, Jr., (“Attorney General” or “State”) pursuant to the Medical Practice Act, Tenn. Code Ann. § 63-1-121 and the Tennessee

Consumer Protection Act of 1977¹ (“TCPA” or “Act”), the Attorney General’s general statutory authority,² and the Attorney General’s authority at common law to secure injunctive and other equitable relief prohibiting the Defendants from engaging in the practice of medicine, deceptive advertising, and other unfair and deceptive acts and practices.

The Defendants in this case must be stopped from engaging in their unlawful scheme which harms consumers and damages the integrity of the marketplace. Defendants’ claims to treat and cure terrible diseases such as AIDS and cancer have *potentially fatal* consequences for consumers or other individuals if relied upon. This court has the ability to take the steps necessary to protect the health and safety interests of past, present, and future consumers. For the reasons more fully stated below, a temporary injunction should immediately issue after an expedited hearing on the matter as a result of the immense health and safety problems that Defendants’ operation poses to the public.

PARTIES

1. Plaintiff, State of Tennessee, through its Attorney General & Reporter, Robert E. Cooper, Jr., is authorized to represent the Department of Health to enforce the Medical Practice Act, Tenn. Code Ann. §§ 63-1-121 and 63-6-101, *et seq.*, under Tenn. Code Ann. § 8-6-301(a) and (b). Under Tenn. Code Ann. §§ 63-1-121 and 63-6-213(c), the Attorney General is authorized to enjoin unlicensed persons from continuing to practice the healing arts or any branch thereof, including medicine, within the state. Further, the Attorney General is charged with enforcing the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101 *et seq.*, (hereinafter “the TCPA”), which prohibits unfair or deceptive acts or practices affecting the conduct of any trade or commerce. Under Tenn. Code Ann. § 47-18-108(a)(1), the Attorney General may initiate civil law enforcement

¹ Tenn. Code Ann. §§ 47-18-101, *et seq.*

² Tenn. Code Ann. § 8-6-109.

proceedings in the name of the State to enjoin violations of the TCPA and to secure such equitable and other relief as may be appropriate in each case.

2. Defendant Oludare Samuel Olomoshua, a.k.a. Dr. Oludare Samuel Olomoshua, a.k.a. Oludare Samuel Olomoshua, Ph.D., a.k.a. S. O. B. Adu (“Olomoshua”) is an individual who is doing business at 1050 44th Avenue, North, Nashville, TN 37209. Previously, Defendant Olomoshua conducted business at 1211 51st Avenue North, Suite 2, Nashville, TN 37209. At all times relevant hereto, Defendant Olomoshua has actively participated in the operation, sales, advertising and promotion of Wisdomite, the School of Medicine, the Wisdomite Spiripathology Healing Mission, and the www.spiripathologyhealing.com Internet web site. Defendant Olomoshua creates and writes all of the text on the web site www.spiripathologyhealing.com aside from the news article postings³ that proclaim to diagnose and treat consumers. Further, Defendant Olomoshua has, acting alone or in concert with others, formulated, directed, controlled or had authority to control⁴ or has participated in the Defendants’ acts and practices including all of the unlawful conduct alleged in the Complaint. Further, Defendants have had the authority to control and stop their violations of law.⁵

3. Defendant Wisdomite Spiripathology Healing Mission and Music Ministry, Inc. (“Wisdomite”) is a Tennessee non-profit corporation doing business in Nashville, Tennessee.

³ Attach. A, Tr. of RCPI Sworn Test. of Mr. Olomoshua, at 41-43. For purposes of this Memorandum in Support, Attach. __ and RCPI Ex. __ shall refer to the attachments to the Temporary Injunction Motion. Also note there are seven Exhibits attached to RCPI Testimony of Mr. Olomoshua. These Exhibits shall be referred to as RCPI Ex. __ and shall be found in numerical order behind Attachment A.

⁴ Defendant Olomoshua is the founder of Wisdomite Spiripathology Healing and Music Ministry, Inc. “Clinical History Video,” available at www.spiripathologyhealing.com/spiripathology_video_2.htm (last visited Oct. 24, 2006).

⁵ Mr. Olomoshua even states, “I was the brain [sic] behind every activity in Spiripathology Medicine in Nashville, TN 37209, USA. The President that made everything happens [sic] since there is no single Medical College in USA that knows anything about Spiripathology Medicine.” RCPI Ex. 3A to Tr. of RCPI Sworn Test. of Mr. Olomoshua, at 13. An officer is liable for his own actions and an agent cannot escape liability for tortious acts, including fraud or misrepresentation, against third persons simply because the agent was acting within the scope of the agency or at the direction of the employer. *Brungard v. Caprice Records, Inc.*, 608 S.W.2d 585, 590 (Tenn. 1980).

Previously, Wisdomite listed its principal place of business on its non-profit registration as 1211 51st Avenue North, Suite 2, Nashville, Tennessee 37209. Defendant Olomoshua is President of the non-profit. Wisdomite currently conducts business from Defendant Olomoshua's residence at 44th Avenue North, Nashville, TN 37209. Wisdomite does business under the name Spiripathology School of Medicine ("School of Medicine"), Wisdomite Healing Mission ("Healing Mission"), and the web site www.spiripathologyhealing.com.

STATEMENT OF FACTS

The State of Tennessee alleges as follows:

Beginning in the late 1990s, the Defendants have advertised and promoted their medical services and cures to the public via brochures, literature and their Internet web site www.spiripathologyhealing.com.

On November 24, 1999, the Defendant Wisdomite registered the name Wisdomite Spiripathology Healing Mission and Music Ministry with the Tennessee Secretary of State as a non-profit corporation. That non-profit corporation is currently in active status. No other Defendant besides Wisdomite is incorporated in the State of Tennessee.

Defendants claim to have offered unsubstantiated, non-FDA approved treatments or "cures" to terrible diseases, including cancer and AIDS, to hundreds of consumers/patients while in the United States.⁶

⁶Attach. A, Tr. of RCPI Sworn Test. of Mr. Olomoshua, at 32.

Practicing Medicine Without a License

Defendant Olomoshua does not and has never possessed a license to practice medicine in the State of Tennessee or any other state nor has he received any formal educational training in conventional medicine.⁷

Defendant Olomoshua does not and has never possessed a license to practice medicine or a degree in medicine from his home country of Nigeria.⁸

The only documents Defendant Olomoshua has that approach medical education credentials are a Certificate of Participation in Alternative Medicine from the Nigerian College of Film Technology and a Certificate of Participation at the Nigerian Television Authority's "2nd Traditional Medicine Fair."⁹

Defendant Olomoshua claims to have began "practicing medicine" from the ages of five (5) to seven (7).¹⁰

⁷ Attach. A, Tr. of RCPI Sworn Test. of Mr. Olomoshua, at 37.

⁸ Attach. A, Tr. of RCPI Sworn Test., Test. of Mr. Olomoshua, at 16.

⁹ RCPI Ex. 3 (Attach. to Ltr. to the State of Tennessee, Office of the Attorney Gen'l.)

¹⁰ Attach. C, "Scientist Corner," available at www.spiripathologyhealing.com/Scientist_Corner_1.htm (last visited Oct. 23, 2006).

In addition to holding himself out as an “M.D.”,¹¹ “Ph.D.”,¹² “doctor,”¹³ “physician,”¹⁴ “practitioner,”¹⁵ and a “professional”¹⁶ without justification, Defendant Olomoshua uses terminology closely associated with the practice of medicine. Defendant Olomoshua claims to “practice medicine,”¹⁷ be “the best health provider,”¹⁸ engage in “scientific research,”¹⁹ “consult

¹¹ RCPI Ex. 3 at (entitled “Spiripathology Medicine Clinical History.”)

¹² Attach. B, “Frequently Asked Questions,” available at www.spiripathologyhealing.com/F_A_Q.htm (last visited October 23, 2006) (“Spiripathology School of Medicine Oludare Samuel Olomoshua, PhD”).

¹³ Attach. B, “Frequently Asked Questions,” available at www.spiripathologyhealing.com/F_A_Q.htm (last visited October 23, 2006) (“PERSONALLY I, AS A SPIRIPATHOLOGY DOCTOR, MAJOR ON ALL TYPES OF CANCER AND HIV/AIDS FOR THE FUN OF IT, BUT I ALSO CURE ALL TERRIBLE DISEASES.”) (emphasis in original).

¹⁴ Attach. C, “Scientist Corner,” available at www.spiripathologyhealing.com/Scientist_Corner_1.htm (“[A]s a physician when you tell your patient how dangerous the case and condition is, you are adding to the disease (s) or problem (s).”). See also Attach. D, “All Types of Cancer Registration Form,” available at www.spiripathologyhealing.com/All_Types_Of_Cancer_Registration_Form.htm (last visited October 23, 2006) (“This is Spiripathology Physician work [sic] it is Practical [sic] it is not faith Healing at all, if you need our faith healing please contact us.”).

¹⁵ Attach. E, OLUDARE OLOMOSHUA, “Preface,” THE MEDICAL NUISANCE.

¹⁶ Attach. F, “Spiripathology Products in a Flash,” available at <http://www.spiripathologyhealing.com/Products.htm> (last visited Oct. 23, 2006).

¹⁷ Attach. C, “Scientist Corner,” available at www.spiripathologyhealing.com/Scientist_Corner_1.htm (last visited October 23, 2006) (“Spiripathology Practice of Medicine thought us never to tell the patient 100% what their case and condition is on terrible diseases only tell them between 20 to 50% of their problems or condition of their case.”). See also RCPI Ex. 3A, at 13 (“I started practicing medicine when I was a child, and when I was fully in practice in Nigeria, I was once [sic] of the group that fought for License and qualification for those who have this type of great knowledge inborn to be able to practice medicine after been tested and found out that they have the ability and knowledge of practicing medicine without a single after effect, with prove from their patients who has received cure, from the books they have written and from their suggestion they have made to the world about the best way to practice medicine so the patient will not experience after effect but receive perfect cure.”). Elsewhere Defendant Olomoshua has denied practicing “conventional” medicine.

¹⁸ Attach. B, “Frequently Asked Questions,” available at www.spiripathologyhealing.com/F_A_Q.htm (last visited October 23, 2006) (“All these are what make us the best health provider in the world today, it make us great by producing the best medicine which can never be produced by a pharmaceutical company.”).

¹⁹ Attach. B, “Frequently Asked Questions,” available at www.spiripathologyhealing.com/F_A_Q.htm (last visited October 23, 2006) (“Therefore, we also depend on the little amount we charge so the organization will be able to go deeper on Spiripathology Scientific Research that produces perfect medicine of our time and give perfect healing for more people, [sic] on terrible diseases.”); See also RCPI Ex. 3A entitled “Complete Profile of Dr. Oludare Sam Olomoshua Specialist on Cancer & HIV/AIDS Asking for Contract to Give Perfect Cure to HIV/AIDS Carrier from United States to All Around the Wrold [sic]!,” at 1; Attach. B, “Frequently Asked Questions,” available at www.spiripathologyhealing.com/F_A_Q.htm (last visited October 23, 2006) (“This is enough to tell you that this is not a religion [sic] organization, but an organization that research deeply in truth,”); Attach. C, “Scientist Corner,” available at www.spiripathologyhealing.com/Scientist_Corner_1.htm (last visited Oct. 23, 2006) (“[O]nly Good Medicine give perfect cures, good medicine take rigorous research to study the viruses”); Attach. G, “Mission,” available at www.spiripathologyhealing.com/Mission.htm (last visited Oct. 23, 2006) (“. . . Spiripathology School of Medicine went deeper into medicine that give perfect cure to terrible diseases only by creating a special research that study everything about the human being and the viruses that produces terrible diseases against man.

patients,”²⁰ be a “scientist,”²¹ be an “HIV/AIDS and cancer specialist,”²² and have “clinically tested” his methods.²³

Elsewhere, Defendant Olomoshua refers to his method of providing “perfect cures” for terrible diseases as based on scientific fact.²⁴

Defendant Olomoshua takes excerpts from the descriptions of diseases and statistics about diseases from other sources. For example, within the tab marked “HIV/AIDS FACTS,” Defendant Olomoshua cites the statistical data gathered by the U.S. Department of Health and Human Services and the Center for Disease Control and Prevention in order to appear more credible.²⁵ Elsewhere, Defendant Olomoshua integrates diagrams and pictures of breast cancer and depictions of cancer at the cellular level.²⁶

²⁰ Attach. B, “Frequently Asked Questions,” available at www.spiripathologyhealing.com/F_A_Q.htm (last visited October 23, 2006) (“How do you decide when a patient should consult you? When you know that your medical doctor has exhausted all possibilities and means of healing, and you want to go on Spiripathy Medication. Or, after consulting your doctor and he advises or requires you to undergo a surgical operation but you want to go on Spiripathy healing instead.”).

²¹ Attach. B, “Frequently Asked Questions,” available at www.spiripathologyhealing.com/F_A_Q.htm (last visited October 23, 2006) (“[O]nce you attend the school and study all the scientific facts that produce perfect cure to terrible diseases and pass the exam during the study and final exams. After the study, you become Spiripathology Scientist that could practice Spiripathology Medicine and safe [sic] life only on terrible diseases.”).

²² RCPI Ex. E entitled “Spiripathology Medicine Clinical History,” at 2. See also RCPI 3A entitled “Complete Profile of Dr. Oludare Sam Olomoshua Specialist on Cancer and HIV/AIDS Asking for Contract to Give Perfect Care to HIV/AIDS Carrier from United States to All Around the Wrold! [sic],” at 1.

²³ RCPI Ex. 3 entitled “Spiripathology Medicine Clinical History,” at 8. Mr. Olomoshua does state that, “Spiripathology Clinical Test is very different to Conventional Medicine Clinical Test.” *Id.* But, then states, “Spiripathology Medicine clinical test need just one or two person to confirm that Spiripathology medicine made for that disease is perfectly working and that it will work for anybody that suffers from that disease.” *Id.*

²⁴ Attach. B, “Frequently Asked Questions,” available at www.spiripathologyhealing.com/F_A_Q.htm (last visited October 23, 2006) (“[O]nce you attend the school and study all the scientific facts that produce perfect cure to terrible diseases . . .”).

²⁵ Attach. H, “The Statistic [sic] of HIV/AIDS in America,” available at www.spiripathologyhealing.com/HIV_AIDS_FACTS.htm (last visited on Oct. 23, 2006).

²⁶ See, e.g., Attach I, “Cancer: The Problem of Man and the Punishment of the Ignorant,” available at www.spiripathologyhealing.com/2005_Spiripathy_Cancer_Press_Release.htm (last visited on Oct. 24, 2006); See also RCPI Ex. 3B entitled “Perfect Healing to Cancer & HIV/AIDS, with the modern medicine of our time,” at 37-54.

Defendant Olomoshua professes to be able to treat and cure²⁷ consumers for all terrible medical conditions, illnesses and diseases.

Defendant Olomoshua professes to have the ability to diagnosis consumers by merely viewing a photograph or looking at the consumer/patient.²⁸

On July 18, 2006, Defendant Olomoshua proclaimed that J.T., an investigator for the Tennessee Department of Health, had three viruses after touching her. He further indicated that he could provide her treatment.

Defendants provide instructions and directions to patients/consumers on how to use the various non-FDA approved and unsubstantiated treatments and “cures” offered by them.

Teaching More Individuals to Practice Medicine Without a License

Commencing at a time presently unknown to the Plaintiff, but at least as early as the late 1990s, the Defendants have advertised and promoted their medical school to the public via brochures, literature and their Internet web site, www.spiripathologyhealing.com.

Defendants offer three (3) month, six (6) month, and twelve (12) month courses on a sliding cost scale and use terms such as “registration fee,” “diploma,” “final examination,” “course,” “institute,” and “lesson.”²⁹

²⁷ Attach. A, Tr. of RCPI Sworn Test. of Mr. Olomoshua, at 25, lines 16-21 (A: “There’s no disease under the sun that is incurable. All disease is curable.” Q: “And you have the cures for those diseases?” A: “Yes, sir. Perfectly sir.” Attach. A, Tr. of RCPI Sworn Test. of Mr. Olomoshua, at 51, lines 4-5 (“There’s no disease that I can’t cure.”); See also RCPI Ex. 3, Ltr. to the State of Tenn., Office of the Att’y Gen’l, at 1 (“Our main job is to do what others can not do, that is making the impossible possible, which is giving cure to those who demanded for it on Social terrible [sic] and Terrible Diseases only.”)

²⁸ Attach. A, Tr. of RCPI Sworn Test. of Mr. Olomoshua, at 27, lines 15-23 (“The photograph is what I use to diagnose. Once you are sick, you send your photograph to me. Then I will use that photograph to diagnose all your disease [sic]. Then at the same time, I will start diagnosing right from the day you are born, the food you be [sic] eating as you grew [sic].”).

²⁹ Attach. J, “The Current Cost for the School,” available at www.spiripathologyhealing.com/the_current_cost_for_the_school.htm (last visited Oct. 24, 2006).

Defendants currently have approximately five (5) students/consumers enrolled in the Medical School.³⁰

Defendants represent and operate a medical school and correspondence school.

Defendants promote that consumers attending the school will be taught all the cures and treatments Defendants possess and how to formulate these “cures” and treatments.

Defendants offer a “Ph.D.” program for \$350 per lesson.³¹

Defendants state that through their program “You will earn (MD*) after your name.”³²

Defendants also represent, “You will be able to have victims of terrible diseases from Cancer to HIV/AIDS as your clients, counseling them in perfect health with a money back guarantee”³³

Elsewhere, Defendants state, “We have designed the study to three stages: Diploma, Degree and Professional (PhD) level, so we can have more safer [sic] Doctors around the world . . . Register now for Spiripathology School of Medicine and study Spiripathology Science that give safe cure to terrible diseases.”³⁴

Students of the school receive a five (5%) commission on what the patient pays when they refer a patient.³⁵

³⁰ Attach. A, Tr. of RCPI Sworn Test. of Mr. Olomoshua, at 81.

³¹ Attach. J, “The Current Cost for the School,” available at www.spiripathologyhealing.com/the_current_cost_for_the_school.htm (last visited Oct. 24, 2006).

³² Attach. G, “Mission,” available at www.spiripathologyhealing.com/mission.htm (last visited Oct. 24, 2006).

³³ Attach. K, “Diploma in Spiripathology School of Medicine,” available at www.spiripathologyhealing.com/Diploma_In_Spiripathology_School_Of_Medicine.htm (last visited Oct. 24, 2006).

³⁴ Attach. G, “Mission,” available at www.spiripathologyhealing.com/Mission.htm (last visited Oct. 24, 2006).

³⁵ Attach. J, “The Current Cost for the School,” available at www.spiripathologyhealing.com/the_current_cost_for_the_school.htm (last visited Oct. 24, 2006).

Defendants have advertised for their “medical school” in the Tennessean, the Nashville Scene, the Metropolitan Transit Authority, Lafayette Radio Broadcasting, WKDF radio, and WGFX radio.³⁶

Defendants have authored and created articles for the West Side News.³⁷

Misrepresentations of Being a Medical Doctor

In Defendants’ advertisements, web sites, literature, and videos, Defendants have used the following misleading, deceptive and unfair terms to represent or imply to Tennesseans and to other consumers that they are or have on staff a M.D.,³⁸ doctor,³⁹ physician,⁴⁰ practitioner,⁴¹ or otherwise imply that a professional oversees the clinic,⁴² when such is not the case.⁴³

Within the “Complete Profile of Dr. Oludare Sam Olomoshua” attached as Collective Exhibit 3 to Sworn Statement of Defendant Olomoshua and in other literature and advertisements, Defendant Olomoshua refers to himself as “Dr. Oludare Sam Olomoshua” and indicates he practices “Spiripathology Medicine.”

³⁶ Attach. A, Tr. of RCPI Sworn Test. of Mr. Olomoshua, at 80-85.

³⁷ Attach. A, Tr. of RCPI Sworn Test. of Mr. Olomoshua, at 83.

³⁸ RCPI Ex. 3 entitled “Spiripathology Medicine Clinical History,” at 7. See also “Home,” available at www.spiripathologyhealing.com/Home.htm (last visited Oct. 24, 2006); Attach. J, “The Current Cost for the School,” available at www.spiripathologyhealing.com/the_current_cost_for_the_school.htm (last visited Oct. 24, 2006).

³⁹ Attach. B, “Frequently Asked Questions,” available at www.spiripathologyhealing.com/F_A_Q.htm (last visited October 23, 2006) (“PERSONALLY I, AS A SPIRIPATHOLOGY DOCTOR, MAJOR ON ALL TYPES OF CANCER AND HIV/AIDS FOR THE FUN OF IT, BUT I ALSO CURE ALL TERRIBLE DISEASES.”) (emphasis in original). See also Attach. B, “Frequently Asked Questions,” available at www.spiripathologyhealing.com/F_A_Q.htm (last visited Oct. 24, 2006).

⁴⁰ Attach. C, “Scientist Corner,” available at www.spiripathologyhealing.com/Scientist_Corner_1.htm (“[A]s a physician when you tell your patient how dangerous the case and condition is, you are adding to the disease (s) or problem (s).”). See also Attach. D, “All Types of Cancer Registration Form,” available at www.spiripathologyhealing.com/All_Types_Of_Cancer_Registration_Form.htm (last visited October 23, 2006) (“This is Spiripathology Physician work [sic] it is Practical [sic] it is not faith Healing at all, if you need our faith healing please contact us.”).

⁴¹ OLUDARE OLOMOSHUA, “Preface,” THE MEDICAL NUISANCE; see also Attach. B, “Frequently Asked Questions,” available at www.spiripathologyhealing.com/F_A_Q.htm (last visited Oct. 24, 2006).

⁴² Attach. F, “Spiripathology Products in a Flash,” available at <http://www.spiripathologyhealing.com/Products.htm> (last visited Oct. 23, 2006).

⁴³ See Attach. A, Tr. of RCPI Sworn Test. of Mr. Olomoshua, at 36-37.

Misrepresentations of Being a Specialist

In Defendants' advertisements, Internet web sites, literature, and videos, Defendants have used the following misleading, deceptive and unfair terms to represent or imply to Tennesseans and to others from outside of Tennessee that they are or have on staff a "Specialist on Cancer & HIV/AIDS," when this is not the case.⁴⁴

Defendants do not possess any speciality or other certification from any accrediting authority in cancer, HIV/AIDS or any other area.

Misrepresentations of Having a Ph.D.

In their advertisements, Internet web sites, literature and videos, Defendants have used misleading, deceptive and unfair terms to represent or imply to Tennesseans and to others from Tennessee that Mr. Olomoshua possesses a "Ph.D.,"⁴⁵ when such is not the case.⁴⁶

Unapproved and Unsubstantiated Medical Condition Cures/ Treatments

Defendants claim to cure all terrible diseases that afflict mankind.⁴⁷ Defendants claim to specialize in curing cancer and AIDS and offer several serums, oils, and perfumes to "cure" these ailments.

⁴⁴ See, e.g., Attach. L, "New Products," available at www.spiripathologyhealing.com/New_Products.htm (last visited Oct. 24, 2006) ("Since we specialize in cancer and HIV/AIDS, we always have Spiripathy Therapy in stock . . ."); See also RCPI Ex. 3A entitled "Complete Profile of Dr. Oludare Samuel Olomoshua Specialist in Cancer & HIV/AIDS" attached as Collective Exhibit 3a; RCPI Ex. 4-6, "Clinical History Videos," available at www.spiripathologyhealing.com/video_7.htm (last visited Oct. 24, 2006) ("I am a specialist on HIV/AIDS.").

⁴⁵ Attach. M, "Press Release Final Cure to HIV/AIDS," available at www.spiripathologyhealing.com/PR_Final_Cure_to_HIV_AIDS.htm (last visited Oct. 24, 2006); Attach. J, "The Current Cost for the School," available at www.spiripathologyhealing.com/Spiripathology_Healing_Email.htm (last visited Oct. 24, 2006); Attach. N, "Contact Us," available at www.spiripathologyhealing.com/Spiripathology_Healing_Email.htm (last visited Oct. 10, 2006); Attach. O, "Products," available at www.spiripathologyhealing.com/Products.htm; Attach. C, "Scientist Corner," available at www.spiripathologyhealing.com/Scientist_Corner_1.htm (last visited Oct. 24, 2006).

⁴⁶ See Attach. A, Tr. of RCPI Sworn Test. of Mr. Olomoshua, at 36-37.

⁴⁷ Attach. A, Tr. of RCPI Sworn Test. of Mr. Olomoshua, at 25 (" . . . Then I said, 'There's no disease under the sun that is incurable. All disease [sic] are curable.'" Q: "And you have the cures for those diseases?" A: "Yes, sir. Perfectly, sir.").

Cancer Cures

Defendants make specific claims to cure all types of cancer. Defendants state, “All types of cancer are curable, perfectly curable, and make it very easy for the patient if they do not go under surgery, chemotherapy, and chemicalized drugs. Spiripathology Medicine gives perfect cure to all types of cancer and brings good living to all.”⁴⁸

Elsewhere, Defendants specifically claim to cure the following fifty-eight (58) varieties of cancer:

Adrenal Cortical cancer, Anal cancer, Bile Duct cancer, Bladder cancer, Bone cancer, Bone Metastasis, Brain / cns Tumors in Adult [sic], Brain/cns Tumor in children, Breast Cancer, Cancer General, Cervical cancer, Childhood non-Hodgkin's Lymphoma, Colon and rectum cancer, Eudiometrical [sic] cancer, Ewing's Family of tumors, Eye cancer, Gallbladder cancer, Gastrointestinal cardioids tumor, Gestatopma Trublolaphi [sic] Disease, Hodgkin [sic] disease, Kaposi's Sarcoma, Kidney cancer, Laryngeal and Hypo pharyngeal cancer, Leukemia adult chronic, Leukemia - Adult acute, Leukemia - children, Liver cancer, Lung cancer, Carcinoid tumor, Male Breast cancer, Malignant Mesothelioma, Metastasis cancer, Multiple Myeloma, Myelodysplastic syndrome, Nasal cavity and Para nasal cancer, Nasopharyngeal cancer, Neuroblastoma, Non-Hodgkin's Lymphoma, Oral cavity and orapharyngeal [sic] cancer, Osteosarcoma, Ovarian cancer, Pancreatic cancer, Penile cancer, Pituitary tumor, Prostate cancer, Rhabdomyosaracoma [sic], Salivary gland cancer, Sarcoma - Adult soft tissue cancer, Skin cancer - Melanoma, Skin Cancer - nonmelnoma [sic], Stomach cancer, Testicular cancer, Thymus cancer, thyroid cancer, Uterine sarcoma, Vaginal cancer, Wilms' tumor, and Pelvic Cancer.⁴⁹

On their web site, Defendants offer “Anti-cancer syrup 100% Perfect” for Seven Hundred Dollars and Fifty-Nine Cents (\$700.59).⁵⁰

In their literature and on the Internet, Defendants offer the following products to “cure” breast cancer: Spiripathy Mystical Protection Soap, Spiripathy Jinx Removing Mystical

⁴⁸ Attach. P, “World of Cancer,” available at www.spiripathologyhealing.com/World_Of_Cancer.htm (last visited Oct. 24, 2006); See also Attach. G, “Mission,” available at www.spiripathologyhealing.com/Mission.htm (last visited Oct. 24, 2006); Attach. Q, “School,” available at www.spiripathologyhealing.com/School.htm (last visited Oct. 25, 2006) (“Cancer’s the easiest sickness to cure in this institute.”); Attach. O, “Products,” available at www.spiripathologyhealing.com/Products.htm (last visited Oct. 24, 2006).

⁴⁹ Attach. P, “World of Cancer,” available at www.spiripathologyhealing.com/World_Of_Cancer.htm (last visited Oct. 24, 2006).

⁵⁰ Attach. O, “Products,” available at www.spiripathologyhealing.com/Products.htm (last visited Oct. 24, 2006).

Sprinkling Salt, Spiripathy Mystical Protection Anointing Perfume, Spiripathy Rose of Jerico [sic] Mystical Solution, Spiripathy anointed great victory incense, Spiripathy Anointed Oil, Holy Spirit Invitation Command in Song, and Spiripathy 909 500 mL.⁵¹ Defendants state, “To be well protected from [sic] the breast cancer attack it is good to take banishing operation super bath at least two times a year.”⁵²

Defendants offer the following products in order to “cure” all types of cancer: Spiripathy Mystical Protection Soap, Spiripathy Jinx Removing Mystical Sprinkling Salt, Spiripathy Mystical Protection Anointing Perfume, Spiripathy Rose of Jerico [sic] Mystical Solution, Spiripathy anointed great victory incense, Spiripathy Anointed Oil, Holy Spirit Invitation Command in Song, and DSR 2003 NY Bronx 500 mL.

Defendants claim, “This syrup will remove every TYPE OF CANCER virus in your blood, wherever they hide, it will scan your system and bring it out.”⁵³

Within Defendants’ “Wisdomite Spiripathology Healing Mission and Music Ministry, Inc. Catalog” which is attached as Attachment W to the Motion, the Defendants have promoted their goods, “cures” or treatments to consumers called “Spiripathy Cool Therapy” which is promoted as “capable of treatment to cancer, skin cancer, pains, it must be added to water for bath. Highly Effective for healing”

None of the Defendants products have been approved by the federal Food and Drug Administration for any purpose including but not limited for the treatment of “cancer, skin cancer or pains.”⁵⁴

⁵¹ RCPI Ex. 3B entitled “Perfect Healing to Cancer & HIV/AIDS, with the Modern Medicine of Our Time”, at 30-31.

⁵² RCPI Ex. 3B entitled “Perfect Healing to Cancer & HIV/AIDS, with the Modern Medicine of Our Time”, at 31.

⁵³ RCPI Ex. 3B entitled “Perfect Healing to Cancer & HIV/AIDS, with the Modern Medicine of Our Time”, at 31 (emphasis in original).

⁵⁴ Attach. A, Tr. of RCPI Sworn Test. of Mr. Olomoshua, at 38-39.

Defendants do not possess verifiable peer reviewed scientific evidence to substantiate and/or support their promoted and advertised claims for any of their products.⁵⁵

Defendants do not possess the substantiation required by the Federal Trade Commission for such claims.

HIV/AIDS Cures

Defendants also promote serums as a cure for HIV/AIDS. Defendant Olomoshua states on his web site, “I, Dr. Oludare Samuel Olomoshua [provide] perfect medicine that give cure to HIV/AIDS . . . [as] once and for all treatment . . . from positive to negative . . . perfect cure within a short period.”⁵⁶

Within Defendants’ “Complete Profile of Dr. Oludare Sam Olomoshua Specialist on Cancer & HIV/AIDS” which is attached as RCPI Exhibit 3A to Attachment A, the Defendants have promoted a good, “cure” or treatment to consumers called “1st. Spiripathy Explosion Soap Anti HIV/AIDS” and claim, “This soap cleans your skin of all toxicity the virus created. . .”.

Elsewhere, Defendants advertise HIV/AIDS Syrup for Perfect Cure and DSR 2003 Spiripathy Therapy (Anti HIV/AIDS).⁵⁷

Within Defendants’ “Complete Profile of Dr. Oludare Sam Olomoshua Specialist on Cancer & HIV/AIDS” which is attached as Exhibit RCPI Exhibit 3A to Attachment A, the Defendants have promoted a good, “cure” or treatment to consumers called “2nd Explosion 3000: Anti HIV/AIDS OIL” and claim “This oil was made with explosive power in Spiripathology Medicine, Which is invisible to human but visible for HIV/AIDS viruses. All the

⁵⁵ Attach. A, Tr. of RCPI Sworn Test. of Mr. Olomoshua, at 38-39.

⁵⁶ RCPI Ex. 4-6 CD-Rom, “Clinical History Videos,” available at www.spiripathologyhealing.com/Spiripathology_video_1.htm (last visited Oct. 24, 2006); see also “What Is Spiripathy Solutions Compact,” available at www.spiripathologyhealing.com/What_Is_Spiripathy_Solutions_Compact.htm; Attach. O, “New Products for Spiripathy Therapy,” available at www.spiripathologyhealing.com/New_Products_For_Spiripathy_Therapy.htm (last visited Oct. 24, 2006).

⁵⁷ See, e.g., Ex. 3B to Tr. of RCPI Sworn Test. of Mr. Olomoshua, at 81.

viruses that associated with HIV/AIDS, knows that the power that must destroy them within a short period of time have come if used. . .”.

Within Defendants’ “Complete Profile of Dr. Oludare Sam Olomoshua Specialist on Cancer & HIV/AIDS” which is attached as RCPI Exhibit 3A to Attachment A, the Defendants have promoted a good, “cure” or treatment to consumers called “3rd. Explosion 3000 Anti HIV/AIDS SYRUP” and claim “Explosion 3000 is powerful Syrup that only large HIV/AID VIRSUS [sic] . . . Within 6 weeks go for a test, you will be HIV/AIDS Negative”

None of Defendants’ “cures” have been approved by the federal Food and Drug Administration for any purpose, including, but not limited to, the treatment or prevention of HIV/AIDS or cancer.⁵⁸

Defendants do not possess verifiable peer reviewed scientific evidence to substantiate/support their claims for any of their HIV/AIDS “cures” or “treatments.”⁵⁹

Defendants’ claims about their AIDS cures are particularly troubling given that Defendant Olomoshua suggests that after treatment his patients may resume sexual activity. In a recounting of one of his patient’s experiences, Defendant Olomoshua states:

The doctor’s cure took just three weeks, what made me laugh . . . his case has been number one I will never forget. He called me very early in the morning around 3 a.m. or so, he said ‘do you know that my sex organ is working now, it just stood up and ready for action. This has never happen for many years.’⁶⁰

Defendants do not possess the substantiation required by the Federal Trade Commission for such claims. There is no known medical cure for HIV or AIDS.

Other Cures

⁵⁸ Attach. A, Tr. of RCPI Sworn Test. of Mr. Olomoshua, at 38-39.

⁵⁹ Attach. A, Tr. of RCPI Sworn Test. of Mr. Olomoshua, at 38-39.

⁶⁰ Attach. C, “Scientist Corner,” available at www.spiripathologyhealing.com/Scientist_Corner_1.htm (last visited Oct. 24, 2006).

While Defendants claim to treat and cure all “terrible” diseases, Defendants make specific claims to cure heart attack, high blood pressure, blood clots, asthma, Parkinson’s disease, schizophrenia, hemorrhoids, fibroid, painful menstruation, diabetes, tuberculosis, yellow fever, and malaria without approval from the FDA or the substantiation of two well controlled scientific studies⁶¹ required by the Federal Trade Commission for those who make health and safety claims.⁶²

Heart Attack Cures

Within Defendants’ “Wisdomite Spiripathology Healing Mission and Music Ministry, Inc. Catalog” which is attached as Attachment W to the Motion, the Defendants have promoted a good, “cure” or treatment to consumers called “Perfect Healing to Heart Attack Demon Seed Remove, 2003” which is alleged to “get you out of heart attack, and make you [sic] heart work better with powerful protection, it also prevent [sic] future attack!” and is a “perfect healing to high blood pressure” and “perfect cure to blood clot, heart diseases, high blood pressure or hypertension.”

Asthma Cures

Within Defendants’ “Wisdomite Spiripathology Healing Mission and Music Ministry, Inc. Catalog” which is attached as Attachment W to the Motion, the Defendants have promoted a good, “cure” or treatment to consumers called “Spiripathy Anti [sic] Asthma” and claim “[T]his is a great treatment for victims of Asthma especially adults” and “[n]o matter how bad your asthma is . . . using this syrup you must be healed perfectly”

⁶¹ Attach. A, Tr. of RCPI Sworn Test. of Mr. Olomoshua, at 38-39.

⁶² *In re Thompson Medical Co.*, 104 F.T.C. 648 (1984), *aff’d* 791 F.2d 189 (D.C. Cir. 1986).

In the same catalog, the Defendants have promoted a good, “cure” or treatment to consumers called “Spiripathy Angelic Super 500 (SAS 500)” and claim “[T]his is a great treatment for victims of Asthma especially adults” and “(n)o matter how bad your asthma is . . . using this syrup you must be healed perfectly”

Also in the same catalog, Defendants have promoted a good, “cure” or treatment to consumers called “Spiripathy Anti Asthma for Children 60 ml to 120 ml.”

Within Defendants’ “Complete Profile of Dr. Oludare Sam Olomoshua Specialist on Cancer & HIV/AIDS” materials which is attached as RCPI Exhibit 3A to Attachment A, the Defendants have promoted a good, “cure” or treatment to consumers called “Asthmatic Syrup” and claim, “This syrup was made by me very powerful for Asthma, this was not limited to Africa, even in USA, I have used this medicine to cure a lot of Asthma Patients both you and Old.”

Parkinson’s Disease Cure

Within Defendants’ “Wisdomite Spiripathology Healing Mission and Music Ministry, Inc. Catalog” which is attached as Attachment W to the Motion, the Defendants have promoted a good, “cure” or treatment to consumers called “Brain Majesty (MB5-3000)” and claim “[t]his syrup is a Perfect Healing to Parkinson’s disease” and it “will correct the damaged brain cells.”

Schizophrenia Cures

Within Defendants’ “Wisdomite Spiripathology Healing Mission and Music Ministry, Inc. Catalog” which is attached as Attachment W to the Motion, the Defendants have promoted a good, “cure” or treatment to consumers called “Brain Majesty (MB5-3000)” and claim “[T]his syrup is a Perfect Healing to Schizophrenic Disorder” and it “will correct the damaged brain cells” and “you do not need to tell (the patient) about it, there is a way you can use it which they

will not know you are giving them any treatment. For details contact Dr. Oludare Sam Olomoshua.”

Hemorrhoid Cures

Within Defendants’ “Complete Profile of Dr. Oludare Sam Olomoshua Specialist on Cancer & HIV/AIDS” materials which is attached as RCPI Exhibit 3A to Attachment A, the Defendants have promoted a good, “cure” or treatment to consumers called “Hemorrhoid” and claim “[T]his is a medicine that gives perfect cure to acute pile instead of surgery; the patient will not need surge [sic] but take this medicine and give perfect cure to Hemorrhoid”.

Fibroid Cures

Within Defendants’ “Complete Profile of Dr. Oludare Sam Olomoshua Specialist on Cancer & HIV/AIDS” materials which is attached as RCPI Exhibit 3A to Attachment A, the Defendants have promoted a good, “cure” or treatment to consumers called “Black Herman Fibroid Power” and claim, “[T]his is another medicine produced by me . . . this medicine go with a complete set, it is meant for women instead of surgery, when taken the fibroid will be cleanly removed and the women will be perfectly okay.”

Painful Menstruation and Related Cures

Within Defendants’ “Complete Profile of Dr. Oludare Sam Olomoshua Specialist on Cancer & HIV/AIDS” materials which is attached as RCPI Exhibit 3A to Attachment A, the Defendants have promoted a good, “cure” or treatment to consumers called “St. Michael AA Syrup” and claim “[T]his deals and cures internal disorders in the body profuse menstruation (menorrhagi, painful menstration [sic]-- Pysmernorrhoea, premenstruation, and Circulatory disturbance-- Molimen, Metrorrhagia, Menopause and Frigidity [sic] in woman. Leucorrhoea -- white vaginal discharge aside from gonorrhea . . . Treatment of this condition is difficult, but

with my research, this medicine cures it and prevents female from having this sickness, by making a total cure and cleanliness of the positions.”

Diabetes Cures

Within Defendants’ “Complete Profile of Dr. Oludare Sam Olomoshua Specialist on Cancer & HIV/AIDS” materials which is attached as RCPI Exhibit 3A to Attachment A, the Defendants have promoted a good, “cure” or treatment to consumers called “Black Herman Caloria DB Syrup” and claim “Diabetes is a disorder in which the pancreas does not produce enough insulin. . . . I made this syrup which was very powerful and enough insulin was produced by the system, and that was free of Diabetes.”

Tuberculosis Cures

Within Defendants’ “Complete Profile of Dr. Oludare Sam Olomoshua Specialist on Cancer & HIV/AIDS” materials which is attached as RCPI Exhibit 3A to Attachment A, the Defendants have promoted a good, “cure” or treatment to consumers called “Bacillus TB Syrup” and claim “[T]his syrup was made by me to give a perfect cure to Tuberculosis All patients with tuberculosis who used my medicine then was perfectly cured.”

Yellow Fever and Malaria Cures

Within Defendants’ “Complete Profile of Dr. Oludare Sam Olomoshua Specialist on Cancer & HIV/AIDS” materials which is attached as RCPI Exhibit 3A to Attachment A, the Defendants have promoted a good, “cure” or treatment to consumers called “Samo-quine Syrup” and claim, “This syrup was number one then for perfect cure to yellow and malaria fever.”

Unsafe Urging of Consumers to Forego Traditional Medical Assistance

Defendants state that Spiripathology is incompatible with conventional medicine⁶³ and urge consumers to forgo traditional medical treatment.

⁶³ Attach. A, Tr. of RCPI Sworn Test. of Mr. Olomoshua, at 63-65.

In the Frequently Asked Questions portion of their web site, Defendants state, “Q: If I’m undergoing my spiripathy therapy, could I still use my formal drugs? A: No. Once you want to go on the spiripathy therapy, you will stop taking all medications.”⁶⁴

Defendants also state, “Say No to Surgery on Terrible Diseases!”⁶⁵

Defendants also represent, “[Chemotherapy] is not good at all; it created more problems to the victims of cancer than good . . . Many types of cure has been brought in to cancer but it did not work but creates more problems to the victims.”⁶⁶

Defendants raise the cost of their products if the patient has undergone traditional medical treatment. Defendants state, “If you have already undergone Medical Treatment (Chemotherapy, Radiation, Surgery, and Others) that created more problems, the cost depend on the damages already done. Medical approach is not the right way for Cancer Treatment, Spiripathology Medicine is the way.”⁶⁷

Defendants also state, “All types of cancer are curable, perfectly curable and make it very easy for the patient if they do not go under surgery, chemotherapy, and chemicalized drugs.”⁶⁸

Within Defendants’ “Wisdomite Spiripathology Healing Mission and Music Ministry, Inc. Catalog” which is attached as Attachment W to the Motion, Defendants promote “DSR 2003 Prevention of Desease (sic)” and indicate that you “do not need vaccination drugs”, “this will do the entire job.”

⁶⁴ Attach. B, “Frequently Asked Questions,” available at “www.spiripathologyhealing.com/F_A_Q.htm (last visited Oct. 24, 2006).

⁶⁵ Attach. R, “Surgery Bad Option for Good Medicine,” available at www.spiripathologyhealing.com/Surgery_Bad_Option_For_Good_Medicine.htm (last visited Oct. 24, 2006).

⁶⁶ Attach. S, “Spiripathy Cancer Press Release,” available at www.spiripathologyhealing.com/2005_Spiripathy_Cancer_Press_Release.htm (last visited Oct. 24, 2006).

⁶⁷ Attach T, “All Types of Cancer Registration Form,” “www.spiripathologyhealing.com/All_Types_Of_Cancer_Registration_Form.htm (last visited Oct. 24, 2006).

⁶⁸ Attach. P, “World of Cancer,” available at www.spiripathologyhealing.com/World_Of_Cancer.htm (last visited Oct. 24, 2006).

Within Defendants' "Complete Profile of Dr. Oludare Sam Olomoshua Specialist on Cancer & HIV/AIDS" materials which is attached as RCPI Exhibit 3A to Attachment A, the Defendants have promoted he can "show and educate man about Spiripathology Medicine. . . . Correcting misunderstanding about Medicine and Cure to terrible diseases without surgery, chemo or radiation that destroy lives."

Within Defendants' "Complete Profile of Dr. Oludare Sam Olomoshua Specialist on Cancer & HIV/AIDS" materials which is attached as RCPI Exhibit 3A to Attachment A on page 11, item 6, Defendants state "[I]f I am suffering from cancer, should I not undergo any physical surgical operation? Yes. You will not undergo physical surgical operation, no pain, and no loss of blood"

Later in the same "Complete Profile," Defendants state "(i)f I am undergoing Spiripathy Therapy, could I still use my formal drugs? No! Once you want to go on Spiripathy Therapy, you will stop taking all medications."

Later in the same "Complete Profile," Defendants state "[O]ur goal is to heal those who need it perfectly without surgery, stem cell or chemotherapy"

Claims of Benefits of Spiripathology Medicine Over Conventional Medicine

Defendants compare the purported benefits of Spiripathology Medicine over conventional medicine.

Within Defendants' "Complete Profile of Dr. Oludare Sam Olomoshua Specialist on Cancer & HIV/AIDS" materials which is attached as RCPI Exhibit 3A to Attachment A on page 13, item 20, Defendants state:

[W]hat is the advantage of Spiripathology medicine over conventional medicine practice on terrible diseases? The advantage of Spiripathology medicine practice on terrible diseases over OTHER MEDICINE: Spiripathology Medicine Practice Modern Medicine on cure to Terrible Diseases, while Conventional uses Old ages that is very Old way of cure to terrible diseases which is destructive.

A. Spiripathology medicine does not support surgery.

- B. Spiripathology medicine does not support chemotherapy.
- C. Spiripathology medicine does not support stem cell type of healing.
- D. Spiripathology medicine discovers the cause of diseases or problems fast and gives solution to it.
- E. Spiripathology medicine gives money back guaranteed on healing service.
- F. Spiripathology medicine gives protection and prevention perfectly.
- G. Spiripathology medicine brings healing to your fingertip, with little faith or no faith at all.
- H. Spiripathology medicine is not after money but after the well being of mankind.
- I. Spiripathology medicine gives tenderness to human life, and gives everlasting hope.
- J. Spiripathology medicine make impossible possible because miracle is so simple.
- K. Spiripathology medicine never supports Medical Marijuana.
- L. Spiripathology Medicine gives perfect cure guarantee to terrible diseases.
- M. Above all Spiripathology Medicine did not liken human being to rodent, rabbit or other animal in medical research, but respected human being in the image of God, the true spirit of God once more not rodent or rabbit and our research are conducted in this way while we received perfect result without any after effect from those that take our medicine.

The Defendants charge consumers for the services, goods, treatments and cures they offer.

Relying on Defendants misrepresentations and claims, consumers have purchased Defendants services, goods, treatments and cures offered by Defendants.

It is medically unsafe for consumers/patients with life-threatening diseases such as cancer, diabetes, HIV, AIDS, Parkinson's Disease and the like to forego traditional medical care and treatment. Defendants treatments and cures have not been established as safe for use on consumers/patients by the federal Food and Drug Administration.

Yet, Defendants make multiple claims about the "safety" of their treatments. For example, Defendants claim, "Register now for Spiripathology School of Medicine and study Spiripathology Science that give safe cure to terrible diseases."⁶⁹

There are no known medical cures for many of the diseases, conditions or illness that Defendants promote and claim to the public that they possess cures for the specific illness, condition or disease.

⁶⁹ Attach. G, "Mission," available at www.spiripathologyhealing.com/Mission.htm (last visited Oct. 24, 2006).

As a result of Defendants' conduct described herein, consumers have suffered ascertainable losses associated with the various unfair, deceptive and misleading acts and practices described in this Complaint.

Illusory Money Back Guarantee That Is Also Not Clearly and Conspicuously Disclosed

In Defendants' advertisements, Internet web sites, literature, and videos, the Defendants have promoted a "MONEY BACK GUARANTEE," and a "MONEY BACK GUARANTEED ON CURE TO TERRIBLE DISEASES."

Within Defendants' "Complete Profile of Dr. Oludare Sam Olomoshua Specialist on Cancer & HIV/AIDS" materials which is attached as RCPI Exhibit 3A to Attachment A on page 12, line 14, Defendants state, "How much does it cost to get Spiripathy healing? \$350.00 to \$15,000.00 . . . We also make your healing a must or your money back that is our money back guarantee."

On the cover of Defendants' "Perfect Healing to Cancer & HIV/AIDS, with the Modern Medicine of Our Time" attached as RCPI Exhibit 3B, Defendants promote "PERFECT HEALING TO CANCER AND HIV/AIDS OR YOUR MONEY BACK. . . ."

On the back of the "Perfect Healing" booklet, Defendants represent, "PERFECT HEALING TO BREAST CANCER OR YOUR MONEY BACK."

Yet, Defendants do not clearly and conspicuously disclose the terms of their illusory money back guarantee. Defendants terms and conditions for the money-back guarantee are found in a small text box that is illegible in size and definition off the innocuously titled "Policy" hot link found at the very bottom of Defendants' "Home Page." Buried in the "fine print" of Defendants' Special Note to the Policy," which is not believed to even be distributed prior to sale, Defendants state:

ABOUT MONEY BACK GUARANTEED! [sic] We do not guaranteed this if the patient make mistake (s) which we can not provide ANSWER to before the mistake (s) was committed, we can not guarantee it at all.⁷⁰

Elsewhere in the “Special Note to the Policy,” Defendants qualify their money-back guarantee by stating:

As we do not support Surgery, Chemotherapy, and Pain killer Drugs, this mean if you have taken this and you ask for treatment, we do not give (Donation) money back guaranteed [sic] or perfect healing guaranteed [sic] but we will try our best to see how we can give you better treatment, this again depend on the damages already done by conventional medicine and treatment you have taken.⁷¹

Defendants completely eliminate any chance the patient might have to invoke the “money back guarantee” by stating, “While Those Patients that interested only in Physical Scientific Prove of Cure to Their Diseases after treatment does not apply.”⁷² Without any way to verify that the consumers have been cured, the money back guarantee is rendered completely illusory.

Use of Testimonials Without Consent

In Defendants’ advertisements, web sites, literature, and videos, Defendants have used testimonials or other claims of cures or treatment of specific patients/consumers without the consumer/patient’s consent.

In the materials, Defendants have publicly stated that a consumer has a life-threatening illness such as HIV/AIDS without the consumer’s consent and in violation of health privacy laws. Moreover, Defendants have misrepresented that the consumers were actually cured in these testimonials.

⁷⁰ Attach. U, “Special Note to the Policy,” available at www.spiripathologyhealing.com/Policy.htm (last visited Oct. 31, 2006).

⁷¹ Attach. U, “Special Note to the Policy,” available at www.spiripathologyhealing.com/Policy.htm (last visited Oct. 31, 2006).

⁷² Attach. U, “Special Note to the Policy,” available at www.spiripathologyhealing.com/Policy.htm (last visited Oct. 31, 2006).

ARGUMENT

I. DEFENDANT OLOMOSHUA’S CONDUCT CONSTITUTES THE PRACTICE OF MEDICINE WITHOUT A LICENSE.

The practice of medicine by a person is defined in Tenn. Code Ann. § 63-6-204(a)(1) as any person “who treats, or professes to diagnose, treat, operates on or prescribes for any physical ailment or any physical injury to or deformity of another.” The statute exempts certain classes of persons from the scope of the definition, but none of these exemptions apply to Defendant Olomoshua.⁷³

Using an almost identical definition of the practice of medicine and nearly identical facts,⁷⁴ the Tennessee Supreme Court held that a purveyor of tonics and liniments who guaranteed anybody with a stiff neck or joint, headache, rheumatism, tape worms, neuralgia or a stiff hand to be cured within five minutes of applying his liniment, was practicing medicine.⁷⁵

More recently, in dictum, the Tennessee Supreme Court has stated that the practice of medicine statute has been “broadly interpreted.”⁷⁶ More recent case law supports this assessment.

In *Spunt v. Fowinkle*,⁷⁷ the Court of Appeals held that a chiropractor who drew blood and conducted Pap smears was practicing medicine under the identical definition given in the former Tennessee Code Annotated. Elsewhere, the Court of Appeals has placed emphasis on delivering treatment and administering drugs in determining if conduct constitutes the practice of medicine.

In *Ison v. McFall*,⁷⁸ the Court of Appeals held that a chiropractor who ***did not administer drugs***

⁷³ See Tenn. Code Ann. § 63-6-204(a)(2),(a)(3), (b), (c), (d), (e), (f) and (g).

⁷⁴ “That any person shall be regarded as practicing medicine within the meaning of this act, who shall treat or profess to treat, operate on, or prescribe for physical ailment or any physical injury to or deformity of another . . .” Sect. 19, p. 120 of the Acts of 1901 (cited in *Payne v. State*, 79 S.W. 1025, 1027 (1904)).

⁷⁵ *Payne v. State*, 79 S.W. 1025, 1027 (1904).

⁷⁶ *Bolton v. CNA Ins. Co.*, 821 S.W.2d 932, 936 (Tenn. 1991).

⁷⁷ 572 S.W.2d 259, 264 (Tenn. Ct. App. 1978).

⁷⁸ 400 S.W.2d 243, 250 (Tenn. Ct. App. 1964).

and who ***gave no treatment*** was not practicing medicine without a license.⁷⁹ Even the examination of a blood sample under a microscope taken for diagnosis constitutes the practice of medicine.⁸⁰

Defendant Olomoshua is engaged in the practice of medicine. By his own admission, he claims to offer treatments and cures for all terrible diseases, specifically to cancer and HIV/AIDS. His sales pitch and position is practically indistinguishable from the purveyor of tonics and liniments in *Payne*, save for the fact that instead of offering cures to relatively benign maladies as in *Payne*, Defendant Olomoshua professes to offer cures to potentially fatal diseases. Defendant Olomoshua offers these various medicines for sale via his web site.

Under Tenn. Code Ann. §§ 63-1-121 and 63-6-213(c), the Defendants' conduct which constitutes the practice of medicine can be enjoined by the State.

II. DEFENDANTS' ACTS AND PRACTICES VIOLATE THE TENNESSEE CONSUMER PROTECTION ACT OF 1977

The Tennessee Consumer Protection Act of 1977 ("TCPA" or "Act")⁸¹ is Tennessee's version of a "Little FTC Act."⁸² The model for the TCPA was developed by the Federal Trade Commission in conjunction with the Committee on Suggested State Legislation of the Council of State Governments and is patterned after Alternative # 3 of the Unfair Trade Practices and

⁷⁹ *Ison*, 400 S.W.2d at 250 (emphasis added).

⁸⁰ *O'Neil v. State*, 115 Tenn. 90 S.W. 627, 630 (1905).

⁸¹ Tenn. Code Ann. §§ 47-18-101 *et seq.*

⁸² "The little FTC Acts were so designated because of their similarity to the provision of the Federal Trade Commission Act that outlaws unfair or deceptive trade practices." *Tucker v. Sierra Builders, Inc.*, 180 S.W.3d 109, 114 (Tenn. Ct. App. 2005).

Consumer Protection Law.⁸³ The TCPA has two main operative provisions: § 104(a) prohibits “[u]nfair or deceptive acts or practices affecting the conduct of any trade or commerce,”⁸⁴ and § 104(b) develops categories of thirty-six prohibited acts and practices which constitute *per se* deception under the Act.⁸⁵ Furthermore, the Act reaches conduct that is not placed into these statutory categories.

The TCPA was not intended to be a codification of the common law and its scope is much broader than that of common-law fraud:⁸⁶

To the contrary, one of the express purposes of the TCPA is to provide additional supplementary state law remedies to consumers victimized by unfair or deceptive business acts or practices that were committed in Tennessee in whole or in part.⁸⁷

Through the TCPA, the State can better protect against business practices that harm consumers and damage the integrity of the marketplace. Under the TCPA, recovery can be obtained without having to meet the burden of proof that is required in a common law fraud case, and the numerous defenses that are available to a defendant in a common law fraud case are simply not available to a defendant in a TCPA case.⁸⁸ An act or practice can be deceptive even if there is no intent to deceive,⁸⁹ knowledge of the deception,⁹⁰ or reliance.⁹¹ Negligent misrepresentations can violate the statute⁹² and the State does not need to prove that any

⁸³ See Council of State Governments, 1970 Suggested State Legislation, Unfair Trade Practices and Consumer Protection Law - Revision (Vol. XXIX), Clearinghouse No. 31, 035 B, Compendium of Unreported and Out-of-State Decisions, filed herewith. See also D. Pridgen, *Consumer Protection and the Law*, § 3:5 (2002).

⁸⁴ Tenn. Code Ann. § 47-18-104(a).

⁸⁵ Tenn. Code Ann. § 47-18-104(b).

⁸⁶ *Tucker*, 180 S.W.3d 109 at 115.

⁸⁷ *Id.* (citing Tenn. Code Ann. §§ 47-18-102(2) and (4)).

⁸⁸ *Tucker*, 180 S.W.3d at 115 (citing *Smith v. Baldwin*, 611 S.W.2d 611, 616 (Tex. 1980)).

⁸⁹ *Smith v. Scott Lewis Chevrolet, Inc.*, 843 S.W.2d 9, 12-13 (Tenn. Ct. App. 1992). *FTC v. Algoma Lumber Co.*, 291 U.S. 67, 81 (1934); *Doherty, Clifford, Steers & Shenfield, Inc. v. FTC*, 392 F.2d 921, 925 (6th Cir. 1968).

⁹⁰ *Smith*, 843 S.W.2d at 12-13.

⁹¹ *Harvey v. Ford Motor Credit Co.*, No. 03A01-9807-CV-00235, 1999 WL 486894, at *2 (Tenn. Ct. App. 1999).

⁹² *Smith*, 843 S.W.2d at 13.

consumer was actually misled or deceived in order to prove that a violation of law has occurred.⁹³

The TCPA is a remedial statute⁹⁴ which must be “liberally construed to . . . protect consumers and legitimate business enterprises from those who engage in deceptive acts or practices.”⁹⁵ The TCPA provides for a private right of action⁹⁶ and also vests civil enforcement authority with the Attorney General and the Division of Consumer Affairs.⁹⁷ In enacting the TCPA, the General Assembly intended to promote the policy of “maintaining ethical standards of dealing between persons engaged in business and the consuming public to the end that good faith dealings between buyers and sellers at all levels be had in [Tennessee].”⁹⁸

Aside from the categories which identify conduct as *per se* deceptive, the TCPA does not define “unfair” or “deceptive.”⁹⁹ In order to give the broadest scope possible to the protections embodied in the statute and in order to prevent ease of evasion because of overly meticulous definitions, consumer protection laws like the TCPA typically make no attempt to define “unfair” or “deceptive,” but merely declare that such acts or practices are unlawful, thus leaving it to the court in each particular case to determine whether there has been a violation of the statute.¹⁰⁰

Deception

⁹³ *Tucker*, 180 S.W.3d at 115.

⁹⁴ *Tucker*, 180 S.W.3d at 115 (citing Tenn. Code Ann. § 47-18-115); *Myint v. Allstate Ins. Co.*, 970 S.W.2d 920, 925 (Tenn. 1998); *Morris v. Mack Used Cars*, 824 S.W.2d 538, 540 (Tenn. 1992).

⁹⁵ Tenn. Code Ann. § 47-18-102(2); *Ganzevoort v. Russell*, 949 S.W.2d 293, 297 (Tenn. 1997); *Morris*, 824 S.W.2d at 540 (quoting *Haverlah v. Memphis Aviation, Inc.*, 674 S.W.2d 297, 305 (Tenn. Ct. App. 1984)).

⁹⁶ Tenn. Code Ann. § 47-18-109.

⁹⁷ Tenn. Code Ann. §§ 47-18-106 - 47-18-108.

⁹⁸ Tenn. Code Ann. § 47-18-102(4).

⁹⁹ See Tenn. Code Ann. § 47-18-103. See also *Tucker*, 180 S.W.3d at 115.

¹⁰⁰ D. Zupanec, *Practices Forbidden by State Deceptive Trade Practice and Consumer Protection Acts*, 89 ALR 3d 449, 458 (1979). See also *Tucker*, 180 S.W.3d at 114; *Pan American World Airways v. United States*, 371 U.S. 296, 307-08 (1963).

Section 115 of the TCPA directs the TCPA to be interpreted “consistently with the interpretations given by the Federal Trade Commission and the federal courts pursuant to §5(A)(1) of the Federal Trade Commission Act.”¹⁰¹ Federal Trade Commission case law currently holds that an act or practice is deceptive if it is “likely to deceive.”¹⁰² The Court of Appeals in *Tucker v. Sierra Builders*¹⁰³ has looked to this definition, in holding that under the TCPA, deception is conduct that “causes or tends to cause a consumer to believe what is false, or that misleads or tends to mislead a consumer as to a matter of fact.”¹⁰⁴ Thus, the State need not prove that any consumer was actually misled or deceived - only that defendants’ conduct has a “tendency” to mislead or deceive.¹⁰⁵

Unfairness

The unfairness definition set forth by the FTC was also adopted in *Tucker v. Sierra Builders*.¹⁰⁶ The court followed the FTC policy statement on unfairness¹⁰⁷ and defined unfairness as an act or practice that “causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.”¹⁰⁸

Consumer injury will be deemed substantial “if a relatively small harm is inflicted on a large number of consumers or if a greater harm is inflicted on a relatively small number of

¹⁰¹ Tenn. Code Ann. § 47-18-115. See also *Tucker*, 180 S.W.3d at 115; *Ganzevoort v. Russell*, 949 S.W.2d at 298.

¹⁰² *FTC v. Consumer Alliance, Inc.*, No. 02C 2429, 2003 WL 22287364 at *4 (N.D. Ill. Sept. 30, 2003); *FTC v. Gill*, 71 F.Supp.2d 1030, 1037 (C.D. Cal. 1999), *aff’d*, 265 F.3d 944 (9th Cir. 2001). Earlier FTC case law referred to a “tendency” or “capacity” to deceive standard, *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 392 (1965); *FTC v. Algoma Lumber Co.*, 291 U.S. 67, 81 (1934).

¹⁰³ 180 S.W.3d 109 (Tenn. Ct. App. 2005).

¹⁰⁴ *Id.* at 115.

¹⁰⁵ *Id.* See also *Williams v. Bruno Appliance and Furniture Mart*, 379 N.E.2d 52, 54 (Ill. App. Ct. 1978).

¹⁰⁶ *Id.* at 116-17.

¹⁰⁷ 15 U.S.C.A. § 45(n).

¹⁰⁸ *Tucker*, 180 S.W.3d at 116 (quoting 15 U.S.C.A. § 45(n)).

consumers.”¹⁰⁹ Substantial injury “must be more than trivial or speculative.”¹¹⁰ “Consumers cannot reasonably avoid injury when a merchant’s sales practices unreasonably create or take advantage of an obstacle to the free exercise of consumer decision-making.”¹¹¹ “Practices that unreasonably interfere with consumer decision-making include (1) withholding important information from consumers, (2) overt coercion, or (3) exercising undue influence over a highly susceptible class of consumers.”¹¹²

The Complaint and the Temporary Injunction Motion allege and provide evidentiary support for a myriad of separate and discreet acts and practices employed by the Defendants which constitute “unfair” *and* “deceptive”-conduct under well settled federal law and the TCPA.¹¹³ Most individual consumer transactions evidence a combination of several unlawful acts and practices and almost always involve false advertising - conduct that readily qualifies as “unfair” and “deceptive.” Further, the Defendants’ conduct is widespread and pervasive and has harmed a large number of consumers throughout the country and the world. The following will illustrate some of the Defendants’ practices which are unfair and deceptive. It is not intended to be an exhaustive list of their unfair and deceptive conduct.

A. The Misrepresentations as to Defendants’ Expertise Are Unfair and Deceptive

¹⁰⁹ *Tucker*, 180 S.W.3d at 116 (citing *Orkin Exterminating Co. v. FTC*, 849 F.2d 1354, 1365 (11th Cir. 1988)).

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ Tenn. Code Ann. §§ 104(a) and (b).

Defendants hold Mr. Olomoshua out as a “M.D.”¹¹⁴ “PhD,”¹¹⁵ doctor,¹¹⁶ physician,¹¹⁷ practitioner,¹¹⁸ and a professional¹¹⁹ when this is not the case.¹²⁰ Aside from this, Defendant Olomoshua uses terminology closely associated with the practice of medicine. Defendant Olomoshua claims to “practice medicine,”¹²¹ be “the best health provider,”¹²² engage in

¹¹⁴ RCPI Ex. 3 entitled “Spiripathology Medicine Clinical History,” at 7.

¹¹⁵ Attach. B, “Frequently Asked Questions,” available at www.spiripathologyhealing.com/F_A_Q.htm (last visited October 23, 2006) (“Spiripathology School of Medicine Oludare Samuel Olomoshua, PhD”).

¹¹⁶ Attach. B, “Frequently Asked Questions,” available at www.spiripathologyhealing.com/F_A_Q.htm (last visited October 23, 2006) (“PERSONALLY I, AS A SPIRIPATHOLOGY DOCTOR, MAJOR ON ALL TYPES OF CANCER AND HIV/AIDS FOR THE FUN OF IT, BUT I ALSO CURE ALL TERRIBLE DISEASES.”) (emphasis in original).

¹¹⁷ Attach. C, “Scientist Corner,” available at www.spiripathologyhealing.com/Scientist_Corner_1.htm (“[A]s a physician when you tell your patient how dangerous the case and condition is, you are adding to the disease (s) or problem (s).”). See also Attach. D, “All Types of Cancer Registration Form,” available at www.spiripathologyhealing.com/All_Types_Of_Cancer_Registration_Form.htm (last visited October 23, 2006) (“This is Spiripathology Physician work [sic] it is Practical [sic] it is not faith Healing at all, if you need our faith healing please contact us.”).

¹¹⁸ Attach. E, OLUDARE OLOMOSHUA, “Preface,” THE MEDICAL NUISANCE.

¹¹⁹ Attach. F, “Spiripathology Products in a Flash,” available at <http://www.spiripathologyhealing.com/Products.htm> (last visited Oct. 23, 2006).

¹²⁰ Attach. A, Tr. of RCPI Sworn Test. of Mr. Olomoshua, at 36-37.

¹²¹ Attach. C, “Scientist Corner,” available at www.spiripathologyhealing.com/Scientist_Corner_1.htm (last visited October 23, 2006) (“Spiripathology Practice of Medicine thought us never to tell the patient 100% what their case and condition is on terrible diseases only tell them between 20 to 50% of their problems or condition of their case.”). See also RCPI Ex. 3A entitled “Complete Profile of Dr. Oludare Sam Olomoshua Specialist or Cancer & HIV/AIDS Asking for Contract to Give Perfect Cure to HIV/AIDS Carrier from United States to All Around the Wrold [sic]! At 13. (“I started practicing medicine when I was a child, and when I was fully in practice in Nigeria, I was once [sic] of the group that fought for License and qualification for those who have this type of great knowledge inborn to be able to practice medicine after been tested and found out that they have the ability and knowledge of practicing medicine without a single after effect, with prove from their patients who has received cure, from the books they have written and from their suggestion they have made to the world about the best way to practice medicine so the patient will not experience after effect but receive perfect cure.”). Elsewhere Defendant Olomoshua has denied practicing “conventional” medicine.

¹²² Attach. B, “Frequently Asked Questions,” available at www.spiripathologyhealing.com/F_A_Q.htm (last visited October 23, 2006) (“All these are what make us the best health provider in the world today, it make us great by producing the best medicine which can never be produced by a pharmaceutical company.”).

“scientific research,”¹²³ consult patients,¹²⁴ be a scientist,¹²⁵ be an HIV/AIDS and cancer specialist,¹²⁶ and have clinically tested his methods.¹²⁷

Each example is deceptive in that it causes or tends to cause a consumer to believe what is false, or that misleads or tends to mislead a consumer as to a matter of fact, namely that Defendants possess expertise in the field of medicine, science and health care.

In addition, the conduct is *per se* deceptive under Tenn. Code Ann. § 47-18-104(b). Tenn. Code Ann. § 47-18-104(b)(2) prohibits a person from causing likelihood of confusion or misunderstanding as to the . . . approval or certification of goods and services. As another example, Tenn. Code Ann. § 47-18-104(b)(5) prohibits representing that a person has a “sponsorship approval, status, affiliation or connection that such person does not have.”

¹²³ Attach. B, “Frequently Asked Questions,” available at www.spiripathologyhealing.com/F_A_Q.htm (last visited October 23, 2006) (“Therefore, we also depend on the little amount we charge so the organization will be able to go deeper on Spiripathology Scientific Research that produces perfect medicine of our time and give perfect healing for more people, [sic] on terrible diseases.”); See also RCPI Ex. 3A entitled “Complete Profile of Dr. Olumoshua Specialist on Cancer & HIV/AIDS Asking for Contract to Give Perfect Cure to HIV/AIDS Carrier from United States to All Around the Wrold [sic]!,” at 1. See also Attach. B, “Frequently Asked Questions,” available at www.spiripathologyhealing.com/F_A_Q.htm (last visited October 23, 2006) (“This is enough to tell you that this is not a religion [sic] organization, but an organization that research deeply in truth, . . .”); See also Attach. C, “Scientist Corner,” available at www.spiripathologyhealing.com/Scientist_Corner_1.htm (last visited Oct. 23, 2006) (“[O]nly Good Medicine give perfect cures, good medicine take rigorous research to study the viruses . . .”); Attach. G, “Mission,” available at www.spiripathologyhealing.com/Mission.htm (last visited Oct. 23, 2006) (“. . . Spiripathology School of Medicine went deeper into medicine that give perfect cure to terrible diseases only by creating a special research that study everything about the human being and the viruses that produces terrible diseases against man.

¹²⁴ Attach. B, “Frequently Asked Questions,” available at www.spiripathologyhealing.com/F_A_Q.htm (last visited October 23, 2006) (“How do you decide when a patient should consult you? When you know that your medical doctor has exhausted all possibilities and means of healing, and you want to go on Spiripathy Medication. Or, after consulting your doctor and he advises or requires you to undergo a surgical operation but you want to go on Spiripathy healing instead.”).

¹²⁵ Attach. B, “Frequently Asked Questions,” available at www.spiripathologyhealing.com/F_A_Q.htm (last visited October 23, 2006) (“[O]nce you attend the school and study all the scientific facts that produce perfect cure to terrible diseases and pass the exam during the study and final exams. After the study, you become Spiripathology Scientist that could practice Spiripathology Medicine and safe [sic] life only on terrible diseases.”).

¹²⁶ RCPI Ex. 3 entitled “Spiripathology Medicine Clinical History,” at 2. See also “Spiripathology Healing Mission Page 9,” available at www.spiripathologyhealing.com (last visited on Oct. 23, 2006).

¹²⁷ RCPI Ex. 3 entitled “Spiripathology Medicine Clinical History,” at 8. Mr. Olumoshua does state that, “Spiripathology Clinical Test is very different to Conventional Medicine Clinical Test.” *Id.* But, then states, “Spiripathology Medicine clinical test need just one or two person to confirm that Spiripathology medicine made for that disease is perfectly working and that it will work for anybody that suffers from that disease.” *Id.*

Each example is also unfair because it has caused or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. Defendants' consumers are likely to suffer substantial bodily injury, if not death, as a result of Defendants' expertise claims which lead consumers to take Defendants' treatment. Defendants' expertise claims make it more likely that consumer will believe the Defendants' unsubstantiated and unapproved purported cures and treatments on all terrible diseases including HIV/AIDS and cancer. The injury that could result from Defendants' expertise claims is likely to cause substantial bodily injury to any person afflicted with a terrible disease who relies upon it. The injury is unavoidable because Defendants are withholding important information. The misrepresentations about expertise are especially troublesome because the Defendants ask consumers to forego traditional methods of treating such diseases as cancer and HIV/AIDS.¹²⁸ Although the State does not have to show reliance, consumers are more apt to rely on Defendants' misrepresentations because of the increased vulnerability that comes with having a fatal or terminal disease. There is no countervailing benefit to consumers for the misrepresentation of the Defendants' expertise.

B. Making Unsubstantiated Health Claims Is Deceptive.

The Federal Trade Commission and federal courts have held that where products involve health and safety and where the efficacy claim is of a scientific nature that is difficult for consumers to judge, two well-controlled scientific studies are required as substantiation.¹²⁹ An advertisement is considered deceptive if the advertiser lacks a reasonable basis to support the claims made in it.¹³⁰ Under Tenn. Code Ann. § 47-18-115, Tennessee courts *shall* construe and

¹²⁸ See, e.g., Attach. P, "World of Cancer," available at www.spiripathologyhealing.com/World_Of_Cancer.htm (last visited Oct. 24, 2006) ("All types of cancer are curable, perfectly curable and make it very easy for the patient if they do not go under surgery, chemotherapy, and chemicalized drugs.")

¹²⁹ See, e.g., *In re Thompson Medical Co.*, 104 F.T.C. 648 (1984), *aff'd*, 791 F.2d 189 (D.C. Cir. 1986).

¹³⁰ *Id.* at 193.

interpret the TCPA in accordance with the interpretations and construction given to the unfair and deceptive prohibition in the Federal Trade Commission Act by the FTC and by federal courts (emphasis added).

Here, Defendant Olomoshua makes health claims about the efficacy of his treatments and cures, but does not have the requisite substantiation in the form of two well-controlled scientific studies.¹³¹ Moreover, the deception is compounded by the fact that Defendants offer medicine that has to be and has not¹³² been approved by the Food and Drug Administration for the particular use indicated.

C. Failure to Adequately Disclose Terms and Conditions of Money Back Guarantee Is Unfair and Deceptive.

Defendants advertise a money-back guarantee on the products Defendants sell to consumers if they are not cured.¹³³ Yet, Defendants' "Special Note to the Policy" on the money-back guarantee is found in an illegible text box off the innocuously titled "Policy" hot link that is found at the very bottom of Defendants home page.

The "Special Note to the Policy" severally restricts the application of the money-back guarantee making it illusory. Defendants state:

ABOUT MONEY BACK GUARANTEED! [sic] We do not guaranteed this if the patient make mistake (s) which we can not provide ANSWER to before the mistake (s) was committed, we can not guarantee it at all.¹³⁴

Elsewhere in the "Special Note to the Policy," Defendants qualify the guarantee further:

As we do not support Surgery, Chemotherapy, and Pain killer Drugs, this mean if you have taken this and you ask for treatment, we do not give (Donation) money back guaranteed [sic] or perfect healing guaranteed [sic] but we will try our best

¹³¹ See Attach A, Tr. of RCPI Sworn Test. of Mr. Olomoshua, at 37-38.

¹³² Attach. A, Tr. of RCPI Sworn Test. of Mr. Olomoshua, at 37-38.

¹³³ See, e.g., Attach. S, "Products," available at www.spiripathologyhealing.com/Products.htm (last visited Oct. 24, 2006).

¹³⁴ Attach. U, "Special Note to the Policy," available at www.spiripathologyhealing.com/Policy.htm (last visited Oct. 31, 2006).

to see how we can give you better treatment, this again depend on the damages already done by conventional medicine and treatment you have taken.¹³⁵

Defendants completely eliminate any chance the patient might have to invoke the “money back guarantee” by stating, “While Those Patients that interested only in Physical Scientific Prove of Cure to Their Diseases after treatment does not apply.”¹³⁶

This is deceptive because it causes or tends to cause a consumer to believe what is false, or that misleads or tends to mislead a consumer as to a matter of fact, namely that the money back guarantee is offered without any conditions to any dissatisfied customer.

According to federal courts interpreting the FTC Act, representations are deceptive if necessary qualifications are not made, if material facts are not disclosed, or if these disclosures or qualifications are too inconspicuous.¹³⁷

The failure to adequately disclose the conditions is unfair because it has caused or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. The misrepresentation of the 100% money back guarantee is likely to cause substantial injury to consumers because it makes it more likely that a consumer would purchase or seek treatment with the Defendants. The injury is substantial because it is likely to cause individuals to seek treatment for fatal or terminal diseases when those treatments have not been approved by the FDA or adequately substantiated. Consumers cannot reasonably avoid injury because Defendants have withheld the critical qualifications on their money back guarantee. There is no countervailing benefit to consumers as a result of making a false or illusory guarantee.

¹³⁵ Attach. U, “Special Note to the Policy,” available at www.spiripathologyhealing.com/Policy.htm (last visited Oct. 31, 2006).

¹³⁶ Attach. U, “Special Note to the Policy,” available at www.spiripathologyhealing.com/Policy.htm (last visited Oct. 31, 2006).

¹³⁷ See, e.g., *FTC v. Brown & Williamson Tobacco Corp.*, 778 F.2d 35, 43 (D.C. Cir. 1985).

D. Use of False Consumer Testimonials Without Consent Is Unfair and Deceptive.

Defendants have posted the testimonies of consumers without their consent on their Internet web site www.spiripathologyhealing.com. Consumer S.B. sought HIV/AIDS treatment from Defendants for both he and his wife, who is HIV positive. Subsequently, Defendants posted the picture of S.B. on his Internet web site without his permission along with a testimonial implying that both Defendants had been cured of AIDS when this was not true.¹³⁸ Not only were the consumers not cured, but they notified Defendant Olomoshua that they had not been cured and asked for a refund of their money.

This is deceptive because it causes or tends to cause a consumer to believe what is false, or that misleads or tends to mislead a consumer as to a matter of fact, namely that consumers have actually received treatment and been cured of HIV/AIDS.

This conduct is unfair because the false testimonials have caused or are likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. Once again, the potential for injury is substantial because the false claims will make it more likely that a consumer will purchase Defendants unapproved and unsubstantiated treatments to fatal or terminal diseases such as cancer and HIV/AIDS. Consumers cannot reasonably avoid injury because Defendants have withheld that the individuals pictured were not cured of AIDS at all.

III. THE TEMPORARY INJUNCTION REQUESTED BY THE STATE IS APPROPRIATE UNDER SECTION 63-1-121 OF THE MEDICAL PRACTICE ACT AND UNDER SECTION 47-18-108(4) OF THE TCPA

A. This Court Has the Authority to Grant the Requested Relief.

¹³⁸ Attach. V, Aff. of S.B., at 1-2.

The Tennessee Attorney General has broad statutory and common law authority with respect to protecting the public.¹³⁹ “As the chief law enforcement officer of the state, the attorney general may exercise such authority as the public interest may require and may file suits necessary for the enforcement of state laws and public protection.”¹⁴⁰

Tenn. Code Ann. §§ 63-1-121 and 63-6-213(c) authorize the Department of Health through the Attorney General to enjoin any person from continuing to practice any branch of the healing arts, including medicine and surgery, without a license.

Section 108(a)(1) of the TCPA authorizes the Attorney General to bring an action in the name of the State whenever there is reason to believe a party has engaged in, is engaging in, or is about to engage in any act or practice prohibited by the TCPA and that the proceedings would be in the public interest. Tenn. Code Ann. § 47-18-108(a)(1).

In cases such as this, where a law enforcement authority acts as a “statutory guardian charged with safeguarding the public interest,” the standard for a temporary injunction is lower than that applied to private litigants.¹⁴¹ The authorization to the Attorney General to seek injunctive and other equitable relief constitutes the legislative determination that there already is an irreparable injury in any violation of the Act.¹⁴² “Unlike private actions, which are rooted in the equity jurisdiction of the courts, in suits based upon statutory authority, proof of irreparable harm or the inadequacy of other remedies is not required.”¹⁴³ “Where a government entity

¹³⁹ Tenn. Code Ann. § 8-6-109(b)(1). *State ex rel. Inman v. Brock*, 622 S.W.2d 36, 41 (Tenn. 1981); *State v. Heath*, 806 S.W.2d 535, 537 (Tenn. Ct. App. 1991).

¹⁴⁰ *State*, 806 S.W.2d at 537.

¹⁴¹ *Tennessee Real Estate Comm’n v. Hamilton*, No. 96-3330-III, p. 6, Ch. Ct. of Tenn., 20th Jud. Dist., Davidson County, Part III (Dec. 1996), *aff’d*, No. 01A01-9707-CH-00320, 1998 WL 272788 at *4-6 (Tenn. Ct. App. May 22, 1998); *Microsoft Corp. v. Action Software*, 136 F.Supp.2d 735, 738-39 (N.D. Ohio 2001); See also *The Virginia Beach S.P.C.A., Inc. v. South Hampton Roads Veterinary Ass’n*, 329 S.E.2d 10, 13 (Va. 1985); *SEC v. Management Dynamics, Inc.*, 515 F.2d 801, 808 (2nd Cir. 1975); *FTC v. World Wide Factors*, 882 F.2d 344, 346 (9th Cir. 1989); *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1029 (7th Cir. 1988).

¹⁴² 11 Wright & Miller, *Federal Practice and Procedure*, 461-62 (1973).

¹⁴³ *FTC v. Nat’l Testing Servs., LLC*, No. 3:05-0613, 2005 WL 2000634, at *3 (M.D. Tenn. Aug. 18, 2005) (internal citations omitted).

demonstrates a substantial showing of a violation of a statute, such violation is sufficient to establish immediate and irreparable harm.”¹⁴⁴ Irreparable injury, therefore, need not be shown¹⁴⁵ and harm to the public is presumed.¹⁴⁶ “The standards of the public interest, not the requirements of private litigation, measure the propriety and need for injunctive relief.”¹⁴⁷

In the ordinary case, traditional equitable injunctions require that the trial judge’s discretion balance four factors which are not prerequisites to be met.¹⁴⁸

The most common description of the standard for a preliminary injunction in federal and state courts is a four-factor test: (1) the threat of irreparable harm to plaintiff if the injunction is not granted; (2) the balance between this harm and the injury that granting the injunction would inflict on the defendants; (3) the probability that plaintiff will succeed on the merits; and (4) the public interest.¹⁴⁹ Tenn. R. Civ. P. 65.04 states the standard for the issuance of a temporary injunction is if “it is clearly shown by a verified complaint, affidavit, or other evidence that the movant’s rights are being or will be violated by an adverse party and the movant will suffer immediate and irreparable injury, loss or damage pending a final judgment . . . or that the acts or omissions of the adverse party will tend to render such final judgment ineffectual.” For the reasons stated above, the State believes the standard is less burdensome for the State when it seeks to enforce a

¹⁴⁴ *Tennessee Real Estate Comm’n v. Hamilton*, No. 96-3330-III, p. 6, Ch. Ct. of Tenn., 20th Jud. Dist., Davidson County, Part III (Dec. 1996), *aff’d*, No. 01A01-9707-CH-00320, 1998 WL 272788 at *4-6 (Tenn. Ct. App. May 22, 1998).

¹⁴⁵ *SKS Merch., LLC v. Barry*, 233 F.Supp.2d 841, 845 (E.D. Ky. 2002); *FTC v. Int’l Computer Concepts, Inc.*, No. 594CV1678, 1994 WL 730144 at *12 (N.D. Ohio Oct. 24, 1994); *World Travel Vacation Brokers*, 861 F.2d at 1029. See also *People, ex rel. Hartigan v. Stianos*, 475 N.E.2d 1024, 1027-28 (Ill. App. 1985); *State v. Fonk’s Mobile Home Park & Sales*, 343 N.W.2d 820, 821 (Wis. App. 1983); *State ex rel Danforth v. Independence Dodge, Inc.*, 494 S.W.2d 362, 370-71 (Mo. App. 1973); *United States v. Sene X Eleemosynary Corp.*, 479 F.Supp. 970, 980-81 (S.D. Fla. 1979).

¹⁴⁶ *FTC v. Nat’l Testing Servs., LLC*, No. 3:05-0613, 2005 WL 2000634 at *3 (M.D. Tenn. Aug. 18, 2005) (internal citations omitted); see also, *Hecht Co. v. Bowles*, 321 U.S. 321, 331 (1944); *World Travel Vacation Brokers*, 861 F.2d at 1029.

¹⁴⁷ *Hecht Co. v. Bowles*, 321 U.S. 321, 331 (1944).

¹⁴⁸ *Frisch’s Restaurant, Inc. v. Shoney’s, Inc.*, 759 F.2d 1261, 1263 (6th Cir. 1985).

¹⁴⁹ *South Cent. R.R. Auth. v. Harakas*, 44 S.W.3d 912, 919 (Tenn. Ct. App. 2000) (quoting Banks & Entman, TENNESSEE CIVIL PROCEDURE § 4-3(l) (1999)); *Tesmer v. Granholm*, 333 F.3d 683, 702 (6th Cir. 2003)(reversed on other grounds); *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 931 (1975) (citing only two components: “the absence of its issuance he will suffer irreparable injury and also that he is likely to prevail on the merits.”)

statutory temporary injunction, but the State submits that the evidence *also* supports a temporary injunction under the standard identified in Tenn. R. Civ. P. 65.04 and at common law.

A case such as this one is especially well-suited for a temporary injunction. Section 108(a)(4) of the TCPA provides that “[t]he courts are authorized to issue orders and injunctions to prevent violations of this part,” and courts have consistently imposed temporary injunctions where, as here, there is evidence of widespread and pervasive deception.¹⁵⁰

B. The Evidence Presented Justifies Entry of a Temporary Injunction

The State has submitted compelling evidence which establishes the Defendants’ course of systematic deception and unfair business practices, as well as conduct which constitutes the practice of medicine.

1. The State Has Demonstrated a Likelihood of Success on the Merits

As evidenced by in the Statement of Facts and Part I of this memorandum, the Complaint, and the numerous other exhibits which demonstrate Defendants’ countless misrepresentations, including statements on the Defendants’ web site that Defendants’ know or have known to be inaccurate,¹⁵¹ the State has demonstrated a likelihood of success on the merits with regard to its claims arising under the Tennessee Consumer Protection Act and the Medical Practice Act.

¹⁵⁰ Tenn. Code Ann. §47-18-108(a)(4). *See also, FTC v. World Travel Vacation Brokers*, 861 F.2d 1020, 1026-28 (7th Cir. 1989); *FTC v. U.S. Oil & Gas Corp*, 748 F.2d 1431, 1434 (11th Cir. 1984); *FTC v. Elders Grain, Inc.*, 868 F.2d 901, 907 (7th Cir. 1989); *FTC v. Amy Travel Service*, 875 F.2d 564, 571-72 (7th Cir. 1989); *FTC v. Southwest Sunsites, Inc.*, 665 F.2d 711, 718-19 (5th Cir. 1982).

¹⁵¹This is not to say we have to prove knowledge for a TCPA violation. *See* notes 268-271.

For purposes of the temporary injunction hearing, the Tennessee Rules of Civil Procedure,¹⁵² Tennessee state courts,¹⁵³ and federal courts¹⁵⁴ all allow for the admittance of affidavits over hearsay objections. The exhibits demonstrate violations of the TCPA and the Medical Practice Act and the need for a temporary injunction.

2. The Balance of Equities Mandates a Temporary Injunction

The balance of equities mandates temporary injunctive relief. Where, as here, public and private equities are at issue, public equities far outweigh private equities.¹⁵⁵

Defendants' past misconduct "gives rise to the inference that there is a reasonable likelihood of future violations."¹⁵⁶ Further, Defendants can have no vested interest in a business activity that is unlawful.¹⁵⁷ Here, without the entry of the proposed temporary injunction, Defendants Wisdomite and Olomoshua will continue their unlawful acts. Defendant Olomoshua has stated that he fled Nigeria because "above all the thing which I can never give up 'my practice of medicine.'"¹⁵⁸

The record shows that Defendants have continued to engage in a pattern of deceptive practices for several years. Past misconduct is "highly suggestive of the likelihood of future

¹⁵² Tenn. R. Civ. P. 65.04 (2) ("A temporary injunction may be granted during the pendency of an action if it is clearly shown by *verified complaint, affidavit* or other evidence that the movant's rights are being or will be violated by an adverse party" . . .)

¹⁵³ *Denver Area Meat Cutters and Employers Pension Plan, ex rel. Clayton Homes, Inc. v. Clayton*, 120 S.W.3d 841, 857 (Tenn. Ct. App. 2003).

¹⁵⁴ See e.g., *FTC v. Nat'l Testing Servs., LLC*, No. 3:05-0613, 2005 WL 2000634, at *2 (M.D. Tenn. Aug. 18, 2005).

¹⁵⁵ *FTC v. World Wide Factors*, 882 F.2d 344, 347 (9th Cir. 1989).

¹⁵⁶ *SEC v. R.J. Allen & Assoc., Inc.*, 386 F.Supp. 866, 877 (S.D. Fla. 1974); *CFTC v. Hunt*, 591 F.2d 1211, 1220 (7th Cir. 1979) ("Once a violation is demonstrated, the moving party need only show that there is some reasonable likelihood of future violations.") (citations omitted).

¹⁵⁷ *United States v. Diapulse Corp. of Am.*, 457 F.2d 25, 29 (2nd Cir. 1972).

¹⁵⁸ Attach. M, "Press Release Final Cure to HIV/AIDS," available at www.spiripathologyhealing.com/PR_Final_Cure_To_HIV_AIDS.htm (last visited Oct. 24, 2006).

violations,” especially where, as here, there is a pattern of misrepresentations as opposed to an isolated occurrence.¹⁵⁹

IV. THE TEMPORARY INJUNCTION SOUGHT DOES NOT VIOLATE THE FREE EXERCISE OF RELIGION CLAUSE OF THE FIRST AMENDMENT.

The Free Exercise Clause to the First Amendment of the United States Constitution has been made applicable to the states through incorporation in the Fourteenth Amendment to the United States Constitution.¹⁶⁰

First and foremost among the reasons why a temporary injunction prohibiting the practice of medicine without a license and prohibiting unfair and deceptive misrepresentations does not violate the free exercise clause, is that *Defendant Olomoshua states that Spiripathology is not a religion*. Defendant Olomoshua has explicitly stated the following in the Frequently Asked Questions section of his web site:

1. Is Spiripathology Healing Mission a Religion [sic] Organization?

NO! That is the mistakes [sic] many people made, Spiripathology is not a religion [sic] organization at all, [sic] Spiripathology is a health provider that gives perfect cure to terrible diseases from Cancer to HIV/AIDS . . . This is enough to tell you that this is not a religion organization, but an organization that research deeply in truth . . .¹⁶¹

Defendant Olomoshua also states as follows:

7. As this treatment is Spiripathy Therapy, must I have faith before my healing take place? No! You do not need to have faith because the Scientific Prove [sic] we received during our research produce the medicine is the license of ability to select the ingredients and properties that must give you perfect cure without faith at all. . . . If you believe that God Almighty created you as a human being, that’s all you may need and what you really need is use [sic] the medicine the way you receive it and as stated in the instruction.¹⁶²

Elsewhere, Defendant Olomoshua states as follows:

¹⁵⁹ *Commodity Futures Trading Commission v. Hunt*, 591 F.2d 1211, at 1220 (Ill. App. Ct., 1979).

¹⁶⁰ U.S. Const. Amend. XIV; See generally *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940).

¹⁶¹ Attach. B, “Frequently Asked Questions,” available at www.spiripathologyhealing.com/F_A_Q.htm (last visited Oct. 20, 2006) (emphasis in original).

¹⁶² *Id.*

12. Even if I am not a Christian, can I still undergo Spiripathy healing?

Once you accept that it is God almighty that created you, or You do not even believe that God Created you, but you created yourself once you follow the instruction that is the dose to take at a specific time of the day, then you must be perfectly cured.

Still elsewhere, Defendant Olomoshua states:

For those who dose [sic] not believe in God at all but only believer in human Science, we also make sure that they only receive physical Spiripathology Medicine that dose not contain Faith Based Initiative at all, which dose [sic] not call the name of Christ Jesus or any other religious name or affirmation during their treatment but only follow the instruction to the number of dosage recommended and time it should be taken, stated in the instruction per day. WE CALL THIS DEPARTMENT HUMAN SCIENTIFIC SPIRIPATHOLOGY MEDICINE ADMINISTRATION ONLY. **No religion attach at all, all they need is follow the instruction and get perfect cure to the disease (s) they are suffering from.**¹⁶³

Even if we disregard these statements and assume that Spiripathology is a religion, the injunction would not violate the Free Exercise clause of the First Amendment to the United States Constitution. The United States Supreme Court held in *Employment Division, Department of Human Resources of Oregon v. Smith*,¹⁶⁴ that the right to free exercise does not relieve an individual of his obligation to obey a valid and neutral law of general applicability.¹⁶⁵ In *Smith*, the Court held that the State's denial of unemployment benefits to Native Americans on the grounds of misconduct for their sacramental use of peyote at a ceremony at a Native American church, which was prohibited by law and resulted in their dismissal, did not violate the Free Exercise Clause. "[The U.S. Supreme Court has] never held that an individual's religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate. On the contrary, the record of more than a century of our free exercise jurisprudence contradicts that proposition."¹⁶⁶ For example, the U.S. Supreme Court, in

¹⁶³ *Id.* (emphasis added).

¹⁶⁴ 494 U.S. 872 (1990).

¹⁶⁵ *Employment Div., Dept. of Human Servs. of Oregon v. Smith*, 494 U.S. 872, 878-79 (1990).

¹⁶⁶ *Smith*, 494 U.S. at 878,

upholding the application of a law criminalizing polygamy against members of a polygamist religious sect stated:

Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name in such circumstances.¹⁶⁷

Both the Tennessee Consumer Protection Act, Tenn. Code Ann. §§ 47-18-101 *et seq.*, and the Medical Practice Act, Tenn. Code Ann. §§ 63-1-121 and 63-6-101 *et seq.*, are neutral laws of general applicability.

The Court in *Smith* declined to follow the test established in *Sherbert v. Verner*¹⁶⁸ in which a State would have to demonstrate a compelling state interest and show that the law used the least restrictive means in order to constitutionally enforce a law of general applicability that substantially burdens an individual's religious practice.¹⁶⁹ The *Smith* court rejected the *Sherbert* test because it "would have produced an anomaly in the law, a constitutional right to ignore neutral laws of general applicability."¹⁷⁰ Moreover, the Court thought that determining whether a law substantially impacted a religious practice was not one in which courts should be involved. The Court stated, "[It] is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds."¹⁷¹

In response to the *Smith* decision, the Congress enacted the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 2000bb *et seq.*, in an attempt to statutorily impose the compelling state interest test on state courts when faced with enforcement of a neutral law that

¹⁶⁷*Reynolds v. United States*, 98 U.S. 145, 166-67 (1878).

¹⁶⁸ 374 U.S. 398, 406 (1963).

¹⁶⁹*Sherbert*, 374 U.S. at 404-05.

¹⁷⁰ *City of Boerne v. Flores*, 521 U.S. 507, 513 (1997) (citing *Smith* and *Sherbert*).

¹⁷¹ *Smith*, 494 U.S. at 887.

substantially burdens the individual's religious practice. In *City of Boerne v. Flores*,¹⁷² the U.S. Supreme Court held that the Congress had exceeded its authority under section five of the Fourteenth Amendment to make the RFRA apply to the states.¹⁷³

Although unnecessary, the State in this case can demonstrate a compelling interest in enforcing the TCPA and the MPA against Defendant Olomoshua by the least restrictive means even assuming for argument's sake that Defendant Olomoshua's constitutional right to the free exercise of religion is substantially impaired.

The State plainly has a compelling interest. Defendant Olomoshua claims to treat "all terrible diseases" and have cures for these terrible diseases, including HIV/AIDS and cancer without a medical license, without approval from the Food and Drug Administration, and without substantiation from two double-blind studies that are peer reviewed as required by the FTC¹⁷⁴ and thereby the TCPA through Tenn. Code Ann. § 47-18-115. In order to undergo Spiripathy Therapy, Defendant Olomoshua requires that the person cease traditional medical treatment. He has stated in order to undergo his cancer treatment that consumers must forego chemotherapy, radiation, or other traditional medical treatment. Defendant Olomoshua states that his patients will be cured in three weeks. By taking Defendant Olomoshua's "treatment" with its "money back guarantee," consumers are given a false sense of security that they will actually be cured of their illness. Without adequate substantiation to prove that he has the cures to these diseases and without a medical license showing that he possesses the requisite qualifications, Defendant Olomoshua poses a threat to the health and welfare of citizens in Tennessee and elsewhere. This threat is especially acute for persons afflicted with fatal or terminal diseases who are more vulnerable, and for immigrant communities within the State with

¹⁷²521 U.S. 507

¹⁷³ *City of Boerne*, 521 U.S. at 536.

¹⁷⁴ See, e.g., *Thompson Medical Co.*, 104 F.T.C. 648 (1984), *aff'd* 791 F.2d 189 (D.C. Cir. 1986).

whom Defendant Olomoshua's claims would have greater currency. Nothing in the injunction would prohibit Defendant Olomoshua from practicing Spiripathology to himself. The injunction will only prohibit him from misrepresenting his qualifications, from representing that he cures and treats terrible diseases without adequate substantiation, and from practicing medicine without a license. In this sense, the law has been enforced using the least restrictive means available.

CONCLUSION

Consumers in Tennessee and throughout the country have suffered, and continue to suffer, monetary loss as a result of Defendants violations of the TCPA and the Medical Practice Act as set forth above. Consumer losses stem, not from isolated or sporadic commercial episodes, but rather from the systematic and continuing use of unfair and deceptive acts and practices. The Defendants have been unjustly enriched as a result of their violations of the TCPA at the expense of consumers. Absent injunctive relief by this Court, the Defendants are likely to continue to injure and exploit consumers, reap unjust enrichment, and harm the public interest.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Brant Harrell, do hereby certify that the foregoing document was served through original process on Defendants at 1050 44th Avenue North, Nashville, TN 37209 and as a courtesy on Defendants' attorney Jefre Goldtrap at 176 Second Avenue North, P.O. Box 190599, Nashville, Tennessee 37219-0599 on this the ____ day of November, 2006.

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